

United States Senate

WASHINGTON, DC 20510

March 10, 2020

The Honorable Michael R. Pence
Vice President of the United States
The White House
Office of the Vice President
1600 Pennsylvania Ave, NW
Washington, DC 20500

Dear Mr. Vice President:

We write with serious concerns regarding mass confusion and lack of clarity around insurance coverage and out-of-pocket costs associated with testing for and treatment of the 2019 Novel Coronavirus (COVID-19). We must have a shared goal of ensuring that all people who need to be tested can access a test without any out-of-pocket costs, and that all people who need care can receive and afford it. It is vital that the Administration offer immediate clarity, guidance, and solutions. Any individual's inability to access testing or care presents a critical risk to the broader public.

In particular, we are concerned about four issues:

- 1) The availability of tests nationwide;
- 2) The lack of clarity for hundreds of millions of Americans about how testing and care is covered;
- 3) The proliferation of junk insurance and a lack of clarity about whether patients will face unexpected cost-sharing when being tested; and
- 4) The lack of access to paid sick days for millions of workers.

Coverage for Treatment and Testing

This week during a press briefing by the President's COVID-19 Task Force, you stated, "With regard to cost, HHS has designated the test as an essential health benefit. It will be covered by private insurance and Medicare/Medicaid."¹ Rather than reassuring patients and families, your statement caused widespread confusion among experts and the media. The fact sheets that your Administration put out did little to ease the minds of American families.

The Affordable Care Act, which your Administration's Department of Justice is actively trying to overturn in the courts, established the essential health benefits (EHBs) as a minimum standard of coverage for private insurance sold in the individual and small group markets and for beneficiaries covered by Medicaid expansion.

The EHBs do not apply to private insurance coverage sold in the large group market, to Medicare, or to many beneficiaries covered under the traditional Medicaid program. Medicare and Medicaid in particular are governed by separate coverage requirements. Hundreds of millions of Americans are enrolled in these types of coverage, and your EHB announcement has left these patients and families

¹ <https://www.foxnews.com/politics/pence-promises-coronavirus-testing-will-be-covered-by-private-insurance-medicare>

without a definitive answer as to whether their coverage will protect them if they need to get tested for COVID-19. For example, your fact sheet states that Medicare Advantage plans “may waive or reduce enrollee cost-sharing for [COVID-19] laboratory tests.”² This leaves open questions for Medicare Advantage beneficiaries about whether they will face high cost-sharing for COVID-19 testing, should they need it.

On a Medicaid and CHIP fact sheet, the Centers for Medicare & Medicaid Services (CMS) says that “testing and diagnostic services are an optional benefit, and can vary by state,” and that states “have flexibility to determine whether to provide coverage of vaccines for adults covered in other eligibility groups, like low-income parents” and can charge premiums and cost-sharing for Medicaid enrollees — such as copayments, coinsurance, deductibles, and other similar charges. The fact sheet also states that while services cannot be withheld for failure to pay, enrollees can be held liable for unpaid copays.³ This also does little to reassure vulnerable Medicaid beneficiaries about what is covered or how much they may have to pay for services associated with COVID-19. In addition, the fact sheet fails to advise states on the specific steps they can take to ensure their state Medicaid programs cover all relevant tests and treatment for COVID-19 without cost-sharing or provide for any type of template or expedited approval process for state plan amendments or other actions requiring Secretarial approval for a state to address these gaps. We request that you clarify for beneficiaries, enrollees, states and participants in Medicare, Medicaid, and large group insurance coverage what is covered and what out-of-pocket expenses patients can expect if they seek testing or treatment.

Additionally, simply stating that testing for COVID-19 is an EHB is not enough. Patients may still face deductibles or other cost-sharing for these tests, depending on their coverage type and status. For example, several states, including New York,⁴ Washington⁵ and Oregon⁶ have issued emergency orders requiring state-regulated plans to cover costs associated with COVID-19 testing before the application of any deductible, with no cost-sharing, and without the need for requirements such as prior authorization. America’s Health Insurance Plans have also stated that its members will, “cover needed diagnostic testing when ordered by a physician” and “will take action to ease network, referral, and prior authorization requirements and/or waive cost sharing.”⁷ Without the federal government issuing clear guidance and standards, patients are confused by the patchwork of commitments from private actors and protections from state regulators. We strongly urge you to clarify your statement about EHBs and provide guidance on how your announcement interacts with state laws and programs and private sector commitments.

Concerns about coverage for COVID-19 testing are compounded by continued challenges with the availability of tests nationwide. Despite President Trump’s erroneous claims that “anyone who wants a test can get a test,” people across the country have persistent unanswered questions about when, where, and to whom tests are available. Repeated delays in the deployment of effective COVID-19 tests and frequently conflicting reports from Administration officials about how many tests are available contribute significantly to such concerns. At a White House press briefing on March 7, officials reported that CDC had shipped COVID-19 tests for approximately 75,000 individuals to public health labs and,

² <https://www.cms.gov/files/document/03052020-medicare-covid-19-fact-sheet.pdf>

³ <https://www.cms.gov/files/document/03052020-medicare-covid-19-fact-sheet.pdf>

⁴ <https://www.governor.ny.gov/news/governor-cuomo-announces-new-directive-requiring-new-york-insurers-waive-cost-sharing>

⁵ <https://www.insurance.wa.gov/sites/default/files/documents/emergency-order-number-20-01.pdf>

⁶ <https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=36097>

⁷ <https://www.ahip.org/statement-by-the-ahip-board-of-directors-taking-action-to-address-coronavirus-covid-19/>

as of March 6, 1.1 million tests had been shipped to non-public health labs. Yet it remains unclear exactly how long it will take labs to validate these tests once they have been received, how many people can be tested with the currently validated tests, or when testing will scale up such that every individual who needs testing can easily access it.

Junk Plans and Additional Co-Pays

Your Administration has expanded the sale of short-term limited-duration insurance plans. These junk plans do not have to cover EHBs, so people who have purchased these plans do not benefit from COVID-19 testing now being considered an EHB. The recently announced policy and related information also offer no help for the 27 million Americans who have no insurance—a number that has risen for the first time in 10 years under your Administration.

Additionally, patients may access testing for COVID-19 through a visit to a doctor's office, clinic or emergency room. Patients may be charged for professional and facility fees associated with these visits, and cost-sharing for these services can be significant. Guidance to date has not been clear that patients may need to receive other services likely to be associated with testing, or that patients may face out-of-pocket costs for those services, even if the test itself is fully covered. For example, although Medicare Part B covers most diagnostic lab tests without any beneficiary cost-sharing, beneficiaries who receive a COVID-19 test at a doctor's office, clinic or emergency room may be responsible for cost-sharing for those related services. While the CMS guidance on coverage for testing in Medicare includes information on ambulatory services, it does not adequately alert beneficiaries that they should expect to be billed for these related services, where applicable, when they receive them related to testing.⁸ We request that you clarify this for the public and ensure all patients understand their cost-sharing for related services.

Finally, patients and their providers need information on who is doing the testing, what provider setting is most appropriate, and under which circumstances a person should be tested. Testing can be conducted by public health labs or by private labs, and where a patient's test is sent may have an impact on expected cost-sharing. Additionally, patients and providers need guidance on when it is appropriate to seek out clinical care and when it is better to avoid emergency rooms and other clinical settings that may expose otherwise healthy individuals to COVID-19.

Paid Sick Leave

We must ensure that our response to COVID-19 includes solutions that protect workers, their families, and communities. Public health experts are telling Americans to stay home if they are sick. But this crisis has emphasized what is an all-too-common reality for far too many workers: that staying home from work to take care of themselves or their families means losing a paycheck or, worse, their jobs. Enacting a federal paid sick days requirement is a long overdue and vital step to address the public health crisis we are currently facing. As such, the Administration should work with Senate and House Democrats to immediately pass the Paid Sick Days for Public Health Emergencies and Personal Family Care Act.

⁸ <https://www.cms.gov/files/document/03052020-medicare-covid-19-fact-sheet.pdf>

Questions

State and local officials and the health care system as a whole are racing to meet the challenge of the COVID-19 outbreak. They need federal officials to provide clear, useful guidance about when to get tested, where testing will occur, how insurance will pay for it, and whether patients can expect out-of-pocket costs. We urge you to clarify your recent statements regarding coverage and out-of-pocket costs as quickly as possible.

Please answer the following questions by March 20, 2020:

- 1) How will your Administration ensure that patients who need tests have no out-of-pocket costs associated with COVID-19 testing?
- 2) How will your Administration ensure that all health plans cover treatment for COVID-19?
- 3) How will your Administration ensure that the vaccines currently under development for COVID-19 will be available at no-cost to all Americans?
- 4) How will you work with states to expedite Medicaid coverage for testing and treatment for COVID-19 without cost-sharing?
- 5) What will your Administration do to ensure that people who have purchased junk insurance or who are uninsured are able to afford COVID-19 testing and treatment?
- 6) Does the Administration currently have a central resource, website, or phone number for Americans who have questions about COVID-19 testing and treatment?
- 7) How is the Administration working to ensure state COVID-19 hotlines are fully staffed, knowledgeable, and responsive to patients and providers with questions and concerns?
- 8) Will your Administration support immediate passage of the *Paid Sick Days for Public Health Emergencies and Personal Family Care Act*?

Sincerely,



CHARLES E. SCHUMER
United States Senate



RON WYDEN
United States Senate



PATTY MURRAY
United States Senate